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Addendum

Annex III

Elements of Crimes

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Elements of Crimes

(Prepared on the basis of the discussion papers proposed by the Coordinator)

Article 6
Genocide[1]

Suggested comments relating to the crime of genocide

[N.B. The following suggested comments, which have not been discussed in detail, are without prejudice to their possible inclusion, to their status and to their relationship with the elements of crimes.]

1. The term "similar conduct" refers to conduct of the nature described in paragraphs (a) to (e) of article 6 of the Statute.

2. The term "serious bodily or mental harm" in article 6 (b) may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.

3. It is recognized that rape and sexual violence may constitute genocide in the same way as any other act, provided that the criteria of the crime of genocide are met.

4. The term "deliberately inflicting conditions ... of life" in article 6 (c) calculated to bring about the physical destruction, in whole or in part, of a group as such may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.

5. The term "forcible" in article 6 (e) is not restricted to direct acts of physical force and may include, but is not necessarily restricted to, threats or intimidation.

Article 6(a)
Genocide by killing

Elements

1. The accused intended to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

2. The accused killed one or more persons of that group in furtherance of that intent.

3. The accused knew or should have known that the conduct would destroy, in whole or in part, such group or that the conduct was part of a pattern of similar conduct directed against that group.

[1] The elements laid down in these documents do not address the different forms of individual criminal responsibility, as enunciated in articles 25 and 28 of the Statute.

Article 6(b)
Genocide by harming

Elements

1. The accused intended to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

2. The accused caused serious bodily or mental harm to one or more persons in that group in furtherance of that intent.

3. The accused knew or should have known that the harm caused would destroy, in whole or in part, such group or was part of a pattern of similar conduct directed against that group.

Article 6(c)
Genocide by inflicting conditions of life

Elements

1. The accused intended to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

2. The accused inflicted certain conditions of life upon the group or members of the group in furtherance of that intent.

3. The conditions of life were calculated to physically destroy that group, in whole or in part.

4. The accused know or should have known that the conditions inflicted would destroy, in whole or in part, such group or were part of a pattern of similar conduct directed against that group.

Article 6(d)
Genocide by preventing births

Elements

1. The accused intended to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

2. The accused imposed measures upon one or more persons within that group in furtherance of that intent.

3. The measures imposed were intended to prevent births within that group.

4. The accused knew or should have known that the measures imposed would destroy, in whole or in part, such group or were part of a pattern of similar conduct directed against that group.

Article 6(e)
Genocide by transferring children

Elements

1. The accused intended to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

2. The accused forcibly transferred one or more persons from that group to another group in furtherance of that intent.

3. The person or persons were, and the accused knew or should have known that the person or persons were, under the age of 18 years.

4. The accused knew or should have known that the forcible transfer or transfers would destroy, in whole or in part, such group or were part of a pattern of similar conduct directed against that group.

Article 7
Crimes against humanity

Chapeau for crimes against humanity

The following general paragraphs would be included as an introduction to the Elements of Article 7.[2]

"Consistent with the general principles of law defined in article 30, it is presumed that all conduct described in the elements must be intentionally committed and the elements do not repeat the general intent implied in each action. Likewise, the elements presume that the conduct is not otherwise legally justified under applicable law referred to in article 21, paragraph 1(b) and (c), of the Statute. Hence, the element of 'unlawfulness' that exists in the Statute and in the jurisprudence of many of these offences has not been repeated in the elements of crimes. Absence of a lawful justification for a particular action need not be proved by the Prosecutor unless the issue is raised by the accused.

"The first two elements for each crime against humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, this element should not be interpreted as requiring proof that the accused had knowledge of all characteristics of the attack or the precise details of the plan or policy of the state or organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the second element indicates that the *mens rea* is satisfied if the accused intended to further such an attack. As always, existence of knowledge or intent can be inferred from relevant facts and circumstances.

[2] The inclusion of general paragraphs and footnotes in this text is without prejudice to the final structure of the Elements of Crimes. There is still some concern regarding the formulation of these general paragraphs. There is also an appreciation that a reconsideration could have an impact on the substance of the elements. Some delegations felt the need to define the terms "widespread" and "systematic". Others expressed concern regarding the need to ensure consistency between parts of the *chapeau* and certain elements of specific crimes.

"'Attack directed against a civilian population' in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that a 'policy to commit such attack' requires that the State or organization actively promote or encourage such conduct as an attack against a civilian population."

Article 7(1)(a)
Crime against humanity of murder

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused[3] killed[4] one or more persons.

Article 7(1)(b)
Crime against humanity of extermination

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused killed[5] one or more persons as part of, or in the context of, a mass killing of members of a civilian population, either directly or indirectly, *inter alia*, by inflicting conditions of life calculated to bring about the destruction of part of a population.[6]

4. The accused intended the conduct to be part of such mass killing.[7]

Article 7(1)(c)
Crime against humanity of enslavement

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

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[3] The term "accused" has been used provisionally and needs to be discussed to ensure consistency with the Statute.

[4] The term "killed" is interchangeable with the term "caused death".

[5] Ibid.

[6] Some delegations believe that death is not required. Other delegations believe that the accused must cause "multiple deaths". In the latter case, the fourth element might not be necessary.

[7] This element is intended to provide the nexus between the *actus reus* (killing one or more persons) and the specific context of this crime (a mass killing of members of the civilian population). It is not related to the concept of "specific intent" as understood in relation to genocide.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.[8]

Article 7(1)(d)
Crime against humanity of deportation or forcible transfer of population

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused deported or forcibly transferred[9] one or more persons to another State or location, by expulsion or other coercive acts.

4. Such person or persons were lawfully present in the area from which they were so deported or transferred and the accused was aware of the factual circumstances that established the lawfulness of such presence.[10]

Article 7(1)(e)
Crime against humanity of imprisonment or other severe deprivation of physical liberty

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.

4. The gravity of the conduct was such that it was in violation of fundamental rules of international law and the accused was aware of such gravity.[11]

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[8] It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

[9] "Deported or forcibly transferred" is interchangeable with "forcibly displaced".

[10] Some delegations wish to insert the phrase "without grounds permitted under international law" after the word "transferred" in element 3 in order to reflect the *lex specialis* governing deportation as stipulated in the Statute. Those delegations wish also to include the phrase "under international law" after the words "lawfully present" in the first line of element 4.

[11] Some delegations want to add the concept of universal recognition to qualify "fundamental rules of international law".

Article 7(1)(f)
Crime against humanity of torture

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused inflicted severe physical or mental pain or suffering upon one or more persons.

4. Such person or persons were in the custody or under the control of the accused.

5. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions, and the accused was so aware.[12]

Article 7(1)(g)-1
Crime against humanity of rape[13]

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused invaded the body of a person by conduct resulting in penetration, however slight, of any part of the[14] body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

4. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.[15]

Article 7(1)(g)-2
Crime against humanity of sexual slavery

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

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[12] Some delegations prefer to include a purpose element.

[13] Elements for crimes of sexual violence are based on the elements of corresponding war crimes. It is understood that the agreement on these formulations is predicated on the compromise regarding the *chapeau*.

[14] The concept of "invasion" is intended to be broad enough to be gender neutral.

[15] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

3. The accused exercised a power attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.

4. The accused caused such person or persons to engage in one or more acts of a sexual nature.

Article 7(1)(g)-3
Crime against humanity of enforced prostitution

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent [16].

4. The accused or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

Article 7(1)(g)-4
Crime against humanity of forced pregnancy

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused confined one or more women.

4. Such woman or women had been forcibly made pregnant.

5. The accused intended to keep the woman or women pregnant in order to affect the ethnic composition of a population or to carry out another grave violation of international law [17].

Article 7(1)(g)-5
Crime against humanity of enforced sterilization

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

[16] Ibid.

[17] Some delegations were of the view that this element may require further drafting.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused deprived one or more persons of biological reproductive capacity.[18]

4. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.[19] [20]

Article 7(1)(g)-6
Crime against humanity of sexual violence

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[21]

4. Such conduct was of a gravity comparable to the other offences in article 7, paragraph (1)(g), of the Statute.

Article 7(1)(h)
Crime against humanity of persecution

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused severely deprived one or more persons or a group of fundamental rights.[22] [23]

4. The accused targeted such person or persons by reason of their belonging to an identifiable group or collectivity.[24]

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[18] The deprivation is not intended to include birth control measures. (The need for this footnote or its contents needs to be revisited.)

[19] The wording of this element has been adjusted from the corresponding war crimes element to improve its grammatical structure, without changing its substance.

[20] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

[21] Ibid.

[22] Some delegations want to add the concept of universal recognition to qualify "*fundamental rights*".

[23] Some delegations were of the view that targeting of groups should be included.

[24] Ibid.

5. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.

6. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.

Article 7(1)(i)
Crime against humanity of enforced disappearance of persons[25]

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused arrested, detained or abducted one or more persons, whether lawfully or unlawfully.[26] [27]

4. Such conduct was carried out on behalf of, or with the authorization, support or acquiescence of, a State or a political organization.[28]

5. The accused subsequently refused, or was aware of a refusal, to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of such person or persons.[29]

6. The accused intended to remove such person or persons from the protection of the law for a prolonged period of time.

Article 7(1)(j)
Crime against humanity of apartheid

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused committed an inhumane act against one or more persons.

4. Such act was an act referred to in article 7, paragraph 1, of the Statute, or was an act of a character similar to any of those acts.[30]

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[25] Some delegations were of the view that this crime requires further consideration to identify the *actus reus* of the accused.

[26] Some delegations were of the view that the reference to "lawfully or unlawfully" was not needed.

[27] Some delegations were of the view that the competence *ratione temporis* of the Court with respect to this crime should be clarified in the light of the relevant provisions of the Statute.

[28] Some delegations were of the view that the relationship between this element and the *chapeau* should be clarified.

[29] Some delegations believe this element is too restrictive. Some delegations believe this element is too expansive. Further drafting may be required.

[30] It is understood that "character" refers to the nature and gravity of the act.

5. The conduct was committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups.

6. The accused intended to maintain such regime by that conduct.

Article 7(1)(k)
Crime against humanity of other inhumane acts

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.[31]

4. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.[32]

Article 8: War crimes

General paragraph as an introduction to the elements of article 8

[N.B. The present paper is without prejudice to its final format, in particular with regard to the inclusion of a general paragraph and footnotes.]

The following general paragraph would be included as an introduction to the elements of article 8:

> "Consistent with the general principles of law defined in article 30, it is presumed that all conduct described in the elements must be intentionally committed and the elements do not repeat the general intent implied in each action. Likewise, the elements presume that the conduct is not otherwise legally justified under applicable law referred to in article 21, paragraph 1 (b) and (c), of the Statute. Hence, the element of 'unlawfulness' that exists in the Statue and in the jurisprudence of many of these offences has not been repeated in the elements of crimes. Absence of a lawful justification for a particular action need not be proved by the Prosecutor unless the issue is raised by the accused."[33]

[31] Some delegations want to add the concept of universally recognized principles to qualify "inhumane act".

[32] It is understood that "character" refers to the nature and gravity of the act.

[33] This sentence may require further reflection since it also relates to the work of the Working Group on Rules of Procedure and Evidence.

Article 8(2)(a)

Article 8(2)(a)(i)
War crime of wilful killing

Elements

1. The conduct took place in the context of and was associated with[34] an international armed conflict.[35]

2. The accused killed one or more persons.[36, 37]

3. Such person or persons were protected under one or more of the Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.[38]

Article 8(2)(a)(ii)-1
War crime of torture [39]

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused inflicted severe physical or mental pain or suffering upon one or more persons.

3. Such person or persons were protected under one or more of the Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

4. The accused inflicted the pain or suffering for the purpose of: obtaining information or a confession, punishment, intimidation or coercion, or obtaining any other similar purpose.[40]

Article 8(2)(a)(ii)-2
War crime of inhuman treatment

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.

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[34] Some delegations were of the view that the words "and was associated with" were unnecessary because they either were implied in the words "in the context of" or they limited the scope of these words.

[35] The term "international armed conflict" includes military occupation.

[36] The term "accused" has been used provisionally and needs to be discussed to ensure consistency with the Statute.

[37] The term "killed" is interchangeable with the term "caused death".

[38] This element specifies the requisite factual knowledge while clarifying that ignorance of the Geneva Conventions is not an excuse.

[39] Some delegations expressed the view that the element of "official capacity" should not be deleted from the elements of torture.

[40] Some delegations expressed the view that this element was not required to prove the war crime of torture.

2. The accused inflicted severe physical or mental pain or suffering upon one or more persons.[41]

3. Such person or persons were protected under one or more of the Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

Article 8(2)(a)(ii)-3
War crime of biological experiments

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused subjected one or more persons to a particular biological experiment.

3. Such person or persons were protected under one or more of the Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

4. The intent of the experiment was non-therapeutic[42] and was neither justified by medical reasons nor carried out in such person's or persons' interest.

5. The experiment seriously endangered the physical or mental health or integrity of such person or persons.

Article 8(2)(a)(iii)
War crime of wilfully causing great suffering

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused caused great physical or mental pain or suffering to or serious injury to body or health of one or more persons.

3. Such person or persons were protected under one or more of the Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

Article 8(2)(a)(iv)
War crime of destruction and appropriation of property

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused destroyed or appropriated certain property.

[41] Some delegations expressed the view that this element should also include conducts constituting "a serious attack on human dignity".

[42] Some delegations preferred to replace "non-therapeutic" by language used in article 8 (2) (b) (x) of the Statute.

3. Such property was protected against destruction or appropriation under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

4. The destruction or appropriation was not justified by military necessity.

5. The destruction or appropriation was extensive and carried out wantonly.

Article 8(2)(a)(v)
War crime of compelling service in hostile forces

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused coerced one or more persons, by act or threat, to take part in military operations against that person's own country or forces or otherwise serve in the forces of a hostile power.

3. Such person or persons were protected under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

Article 8(2)(a)(vi)
War crime of denying a fair trial

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused deprived one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and the fourth Geneva Conventions of 1949.

3. Such person or persons were protected under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

Article 8(2)(a)(vii)-1
War crime of unlawful deportation and transfer

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused deported or transferred one or more persons to another State or to another location.

3. Such person or persons were protected under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

Article 8(2)(a)(vii)-2
War crime of unlawful confinement

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused confined or continued to confine one or more persons to a certain location.

3. Such person or persons were protected under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

Article 8(2)(a)(viii)
War crime of taking hostages

Elements

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused seized, detained or otherwise held hostage one or more persons.

3. The accused threatened to kill, injure or continue to detain such person or persons.

4. Such person or persons were protected under one or more of the relevant Geneva Conventions of 1949 and the accused was aware of the factual circumstances that established this status.

5. The accused intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.

Article 8(2)(b)

Article 8(2)(b)(i)
War crime of attacking civilians

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused attacked a civilian population as such or individual civilians not taking direct part in hostilities.

3. The accused intended the object of the attack to be the civilian population as such or individual civilians not taking direct part in hostilities.

Article 8(2)(b)(ii)
War crime of attacking civilian objects

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused attacked civilian objects, that is, objects which are not military objectives.

3. The accused intended the object of the attack to be one or more such civilian objects.

Article 8(2)(b)(iii)
War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused attacked personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.

3. Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict and the accused was aware of the factual circumstances that established that protection.

4. The accused intended the object of the attack to be such personnel, installations, material, units or vehicles.

Article 8(2)(b)(iv)
War crime of excessive incidental death, injury or damage

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused launched an attack.

3. The accused knew that the attack would result in incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.[43]

[43] Some delegations suggested the inclusion of the following text as a commentary to this element:

"The concept of 'direct overall military advantage' is understood to refer to both the tactical and theatre level but not to the strategic level."

Article 8(2)(b)(v)
War crime of attacking undefended places[44]

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused attacked one or more town, village, dwelling or building.

3. Such town, village, dwelling or building was open for unresisted occupation.

4. The town, village, dwelling or building did not constitute a military objective.

5. The accused was aware of the factual circumstances that rendered the town, village, dwelling or building undefended.

Article 8(2)(b)(vi)
War crime of killing or wounding a person *hors de combat*

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused killed or injured one or more persons.

3. Such person or persons were *hors de combat*.

4. The accused was aware of the factual circumstances that established this status.

Article 8(2)(b)(vii)-1
War crime of improper use of a flag of truce

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused used a flag of truce to feign an intention to negotiate when there was no such intention on the part of the accused.

3. The accused knew or should have known of the prohibited nature of such use.

4. The conduct resulted in death or serious personal injury.

Article 8(2)(b)(vii)-2
War crime of improper use of a flag, insignia or uniform of the hostile party

1. The conduct took place in the context of and was associated with an international armed conflict.

[44] Some delegations suggested the inclusion of the following text as a commentary to the elements of this crime:

"The presence in the locality of persons specially protected under the Geneva Conventions and of police forces retained for the sole purpose of maintaining law and order does not render the locality a military objective."

2. The accused used the flag, insignia or uniform of the hostile party while engaged in an attack.

3. The accused knew or should have known of the prohibited nature of such use.

4. The conduct resulted in death or serious personal injury.

Article 8(2)(b)(vii)-3
War crime of improper use of a flag, insignia or uniform of the United Nations

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused used a flag, insignia or uniform of the United Nations in a manner prohibited under the international law of armed conflict.

3. The accused knew of the prohibited nature of such use.

4. The conduct resulted in death or serious personal injury.

Article 8(2)(b)(vii)-4
War crime of improper use of the distinctive emblems of the Geneva Conventions

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused used the distinctive emblems of the Geneva Conventions for combatant purposes[45] in violation of the international law of armed conflict.

3. The accused knew or should have known of the prohibited nature of such use.

4. The conduct resulted in death or serious personal injury.

Article 8(2)(b)(viii)
The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The perpetrator:

[45] "Combatant purposes" in these circumstances means purposes directly related to hostilities and not including medical, religious or similar activities.

(a) Transferred,[46] directly or indirectly, parts of its own population into the territory it occupies, or

(b) Deported or transferred all or parts of the population of the occupied territory within or outside this territory.

Article 8(2)(b)(ix)
War crime of attacking protected objects[47]

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused attacked one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.

3. The accused intended the object of the attack to be one or more buildings, monuments, hospitals or places of such nature.

Article 8(2)(b)(x)[48]-1
War crime of mutilation

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused mutilated one or more persons, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.

3. Such person or persons were in the power of an adverse party.

4. The conduct caused death or seriously endangered the physical or mental health of such person or persons.

5. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.[49]

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[46] The term "transfer" needs to be interpreted in accordance with the relevant provisions of international humanitarian law.

[47] Some delegations suggested the inclusion of the following text as a commentary to the elements of this crime:

"The presence in the locality of persons specially protected under the Geneva Conventions and of police forces retained for the sole purpose of maintaining law and order does not render the locality a military objective."

[48] It is understood that any modifications to the draft elements for article 8(2)(b)(x), including the draft general paragraph to be included as an introduction to article 8, would require re-examination of this text for applicability.

[49] Consent is not a defence to this crime. The crime prohibits any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the party conducting the procedure and who are in no way deprived of liberty.

Article 8(2)(b)(x)[50]-2
War crime of medical or scientific experiments

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused subjected one or more persons to a medical or scientific experiment.

3. Such person or persons were in the power of an adverse party.

4. The experiment caused death or seriously endangered the physical or mental health or integrity of such person or persons.

5. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.[51]

Article 8(2)(b)(xi)
War crime of treacherously killing or wounding

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused invited the confidence of one or more persons belonging to an adverse party and to believe that he or she was entitled to or is obliged to accord protection under rules of international law applicable in armed conflict with intent to betray that confidence.

3. The accused killed or injured that person or persons.[52]

4. In killing or injuring, the accused made use of the confidence invited by him or her.

Article 8(2)(b)(xii)
War crime of denying quarter

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused declared or ordered that there shall be no survivors.

3. The accused was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.

4. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.

[50] See note 48 above.
[51] See note 49 above.
[52] The term "killed" is interchangeable with the term "caused death".

Article 8(2)(b)(xiii)
War crime of destroying or seizing the enemy's property[53]

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused destroyed or seized certain property.

3. Such property was private or public property of the hostile party and the accused was aware of the status of the property.

4. The destruction or seizure was not required by military necessity.

Article 8(2)(b)(xiv)
War crime of depriving the nationals of the hostile power of rights or actions

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused effected the abolition, suspension or termination of admissibility in a court of law of certain rights or actions.

3. The abolition, suspension or termination was knowingly[54] directed at the nationals of a hostile party.

Article 8(2)(b)(xv)
War crime of compelling participation in military operations

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused coerced one or more persons by act or threat to take part in military operations against that person's own country or forces.

3. Such person or persons were nationals of a hostile party and the accused was aware of their nationality.

Article 8(2)(b)(xvi)
War crime of pillaging

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused appropriated or seized certain property.

[53] It is understood that the *chapeau* may have to be adapted to address the applicability of this crime in naval warfare. It was understood that the Working Group will return to this crime to consider both its scope and its content.

[54] Some delegations are of the view that "knowingly" in this element means "intentionally".

3. The appropriation or seizure was not justified by military necessity and was committed with intent to deprive the owner thereof.

Article 8(2)(b)(xvii)
War crime of employing poison or poisoned weapons

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused employed a substance that causes death or serious damage to health in the ordinary course of events, through its toxic properties, or a weapon that releases such a substance as a result of its employment.

3. The accused was aware of the nature of such substance or weapon.

Article 8(2)(b)(xviii)
War crime of employing prohibited gases, liquids, materials or devices

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused employed a gas, other substance or device that causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties.[55]

3. The accused was aware of the nature of such gas, substance or device.

Article 8(2)(b)(xix)
War crime of employing prohibited bullets

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused employed bullets the use of which violates the international law of armed conflict because they expand or flatten easily in the human body.

3. The accused was aware that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.

[55] Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to development, production, stockpiling and use of chemical weapons.

Article 8(2)(b)(xx)
War crime of employing weapons, projectiles or materials or methods of warfare listed in the Annex to the Statute

[Elements will have to be drafted once weapons, projectiles or material or methods of warfare have been included in an annex to the Statute.]

Article 8(2)(b)(xxi)[56]
War crime of outrages upon personal dignity

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused humiliated, degraded or otherwise violated the dignity of one or more persons.[57]

3. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.

Article 8(2)(b)(xxii)-1
War crime of rape

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused invaded[58] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

3. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.[59]

Article 8(2)(b)(xxii)-2
War crime of sexual slavery

1. The conduct took place in the context of and was associated with an international armed conflict.

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[56] It is understood that any modifications to the draft elements for article 8 (2) (a), including the draft general paragraph to be included as an introduction to article 8, would require re-examination of this text for applicability.

[57] For this crime, "persons" can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account the cultural background of the victim.

[58] The concept of "invasion" is intended to be broad enough to be gender-neutral.

[59] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

2. The accused exercised a power attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.

3. The accused caused such person or persons to engage in one or more acts of a sexual nature.

Article 8(2)(b)(xxii)-3
War crime of enforced prostitution

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[60]

3. The accused or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

Article 8(2)(b)(xxii)-4
War crime of forced pregnancy

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused confined one or more women.

3. Such woman or women had been forcibly made pregnant.

4. The accused intended to keep the woman or women pregnant in order to affect the ethnic composition of a population or to carry out another grave violation of international law.

Article 8(2)(b)(xxii)-5
War crime of enforced sterilization

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused deprived one or more persons of biological reproductive capacity.[61]

3. The conduct neither was justified by the medical or hospital treatment of the person or persons concerned nor was carried out with their genuine consent.[62]

[60] Ibid.

[61] The deprivation is not intended to include birth-control measures.

[62] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

Article 8(2)(b)(xxii)-6
War crime of sexual violence

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[63]

3. The conduct was of a gravity comparable to that of a grave breach of the Geneva Conventions.

Article 8(2)(b)(xxiii)
War crime of using protected persons as shields

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused moved or otherwise took advantage of the location of one or more civilians or other persons protected under the international law of armed conflict.

3. By that conduct, the accused intended to shield a military objective from attack or shield, favour or impede military operations.

Article 8(2)(b)(xxiv)
War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused attacked one or more persons, buildings, medical units or transports or other objects using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions.

3. The accused intended the object of the attack to be such persons, buildings, units or transports or other objects so using such identification.

Article 8(2)(b)(xxv)
War crime of starvation as a method of warfare

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused deprived civilians of objects indispensable to their survival.

[63] Ibid.

3. By that conduct, the accused intended to starve civilians as a method of warfare.

Article 8(2)(b)(xxvi)
War crime of using, conscripting or enlisting children

1. The conduct took place in the context of and was associated with an international armed conflict.

2. The accused conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively in hostilities.

3. Such person or persons were under the age of 15 years.

4. The accused knew or should have known that such person or persons were under the age of 15 years.

Article 8(2)(c)[64]

Article 8(2)(c)(i)-1
War crime of murder

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.[65]

2. The accused killed one or more persons.[66]

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel[67] taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.[68]

Article 8(2)(c)(i)-2
War crime of mutilation

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused mutilated one or more persons, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.

3. The conduct was not justified by the medical, dental or hospital treatment of the person or persons concerned and not carried out in such person's or persons' interests.

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[64] It is understood that any modification to the draft elements for article 8 (2) (a), may require re-examination of the elements of article 8 (2) (c).

[65] This element would not be necessary if it were included in a general paragraph or in general elements to article 8 (2) (c).

[66] The term "killed" is interchangeable with the term "caused death".

[67] The term "religious personnel" includes those non-confessional non-combatant military personnel carrying out a similar function.

[68] This element would not be necessary if it were included in a general paragraph or in general elements to article 8 (2) (c).

4. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

Article 8(2)(c)(i)-3
War crime of cruel treatment

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused inflicted severe physical or mental pain or suffering upon one or more persons.

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

Article 8(2)(c)(i)-4
War crime of torture

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused inflicted severe physical or mental pain or suffering upon one or more persons.

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

4. The accused inflicted the pain or suffering for the purpose of obtaining information or a confession, punishment, intimidation or coercion, or obtaining any other similar purpose.

Article 8(2)(c)(ii)
War crime of outrages upon personal dignity

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused humiliated, degraded or otherwise violated the dignity of one or more persons.[69]

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

[69] For this crime, "persons" can include dead persons.
It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation.
This element takes into account cultural background of the victim.

4. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.

Article 8(2)(c)(iii)
War crime of taking hostages

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused seized, detained or otherwise held hostage one or more persons.

3. The accused threatened to kill, injure or continue to detain such person or persons.

4. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

5. The accused intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.

Article 8(2)(c)(iv)
War crime of sentencing or execution without due process

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused passed sentence or executed one or more persons.[70]

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

4. There was no previous judgement pronounced by a court, or the court that rendered judgement was not "regularly constituted", that is it did not afford the essential guarantees of independence and impartiality, or the court that rendered judgement did not afford all other judicial guarantees generally recognized as indispensable under international law.[71]

5. The accused was aware of the absence of a previous judgement or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial.[72]

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[70] The elements laid down in these documents do not address the different forms of individual criminal responsibility, as enunciated in articles 25 and 28 of the Statute.

[71] With respect to elements 4 and 5, the Court should consider whether, in the light of all relevant circumstances, the cumulative effect of factors with respect to guarantees deprived the person or persons of a fair trial.

[72] Ibid.

Article 8(2)(e)

Article 8(2)(e)(i)
War crime of attacking civilians

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused attacked a civilian population as such or individual civilians not taking direct part in hostilities.

3. The accused intended the object of the attack to be the civilian population as such or individual civilians not taking direct part in hostilities.

Article 8(2)(e)(ii)
War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused attacked one or more persons, buildings, medical units or transports, or other objects using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions.

3. The accused intended the object of the attack to be such persons, buildings, units or transports or other objects so using such identification.

Article 8(2)(e)(iii)
War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused attacked personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.

3. Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict and the accused was aware of the factual circumstances that established that protection.

4. The accused intended the object of the attack to be such personnel, installations, material, units or vehicles.

Article 8(2)(e)(iv)
War crime of attacking protected objects

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused attacked one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.

3. The accused intended the object of the attack to be one or more buildings, monuments, hospitals or places of such nature.

Article 8(2)(e)(v)
War crime of pillaging

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused appropriated or seized certain property.

3. The appropriation or seizure was not justified by military necessity and was committed with intent to deprive the owner thereof.

Article 8 (2)(e)(vi)-1
War crime of rape

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused invaded[73] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

3. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.[74]

Article 8(2)(e)(vi)-2
War crime of sexual slavery

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused exercised a power attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.

3. The accused caused such person or persons to engage in one or more acts of a sexual nature.

[73] The concept of "invasion" is intended to be broad enough to be gender-neutral.

[74] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

Article 8(2)(e)(vi)-3
War crime of enforced prostitution

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[75]

3. The accused or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

Article 8(2)(e)(vi)-4
War crime of forced pregnancy

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused confined one or more women.

3. Such woman or women had been forcibly made pregnant.

4. The accused intended to keep the woman or women pregnant in order to affect the ethnic composition of a population or to carry out another grave violation of international law.

Article 8(2)(e)(vi)-5
War crime of enforced sterilization

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused deprived one or more persons of biological reproductive capacity.[76]

3. The conduct neither was justified by the medical or hospital treatment of the person or persons concerned nor was carried out with their genuine consent.[77]

Article 8(2)(e)(vi)-6
War crime of sexual violence

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

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[75] Ibid.

[76] The deprivation is not intended to include birth-control measures.

[77] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

2. The accused committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[78]

3. The conduct was of a gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions.

Article 8(2)(e)(vii)
War crime of using, conscripting and enlisting children

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.

3. Such person or persons were under the age of 15 years.

4. The accused knew or should have known that such person or persons were under the age of 15 years.

Article 8(2)(e)(viii)
War crime of displacing civilians

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused ordered a displacement of a civilian population.

3. The accused was in a position to effect such displacement by giving such order.

4. Such order was not justified by the security of the civilians involved or by military necessity.

Article 8(2)(e)(ix)
War crime of treacherously killing or wounding

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused invited the confidence of one or more combatant adversaries to believe that he or she was entitled to or is obliged to accord protection under rules of international law applicable in armed conflict with intent to betray that confidence.

3. The accused killed or injured that person or persons.[79]

4. In killing or injuring, the accused made use of the confidence invited by him or her.

[78] Ibid.

[79] The term "killed" is interchangeable with the term "caused death".

Article 8(2)(e)(x)
War crime of denying quarter

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused declared or ordered that there shall be no survivors.

3. The accused was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.

4. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.

Article 8(2)(e)(xi)-1
War crime of mutilation

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused mutilated one or more persons, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.

3. Such person or persons were in the power of another party to the conflict.

4. The conduct caused death or seriously endangered the physical or mental health of such person or persons.

5. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.[80]

Article 8(2)(e)(xi)-2
War crime of medical or scientific experiments

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused subjected one or more persons to a medical or scientific experiment.

3. Such person or persons were in the power of another party to the conflict.

4. The experiment caused death or seriously endangered the physical or mental health or integrity of such person or persons.

5. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.[81]

[80] Consent is not a defence to this crime. The crime prohibits any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards.

[81] Ibid.

Article 8(2)(e)(xii)
War crime of destroying or seizing the enemy's property

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused destroyed or seized certain property.

3. Such property was private or public property of the adversary and the accused was aware of the status of the property.

4. The destruction or seizure was not required by military necessity.[82]

[82] It is understood that the *chapeau* may have to be adapted to address the applicability of this crime in naval warfare. It was understood that the Working Group will return to this crime to consider both its scope and its content.